

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 23, 2014 Session

KENNETH D. HARDY v. TENNESSEE STATE UNIVERSITY, ET AL.

**Appeal from the Circuit Court for Davidson County
No. 09C4164 Carol Soloman, Judge**

No. M2013-02103-COA-R3-CV - Filed August 22, 2014

Former police officer at Tennessee State University filed suit against the university, the Tennessee Board of Regents, and the chief of the university police department under the Tennessee Human Rights Act, the Tennessee Public Protection Act, and Title VII of the Civil Rights Act of 1964. The trial court granted the defendants' motion for summary judgment and former officer appeals. We vacate the order granting summary judgment and remand the case for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Vacated and Case Remanded.

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P. J., M. S., and W. Neal McBrayer, J. joined.

Ann Buntin Steiner, Nashville, Tennessee, for the appellant, Kenneth D. Hardy.

Robert E. Cooper, Jr., Attorney General and Reporter; Joseph F. Whalen, Acting Solicitor General; Melissa Brodhag, Assistant Attorney General, Nashville, Tennessee, for the appellee, Tennessee State University, Tennessee Board of Regents, and Chief Sylvia Russell.

OPINION

Kenneth Hardy ("Hardy") was employed by Tennessee State University ("TSU") as a full-time police officer on its main campus from November 6, 2006, until July 1, 2008, when he was transferred to the downtown campus; he resigned his employment on September 27, 2009. On November 24, 2009 he filed suit against TSU, the Tennessee Board

of Regents¹, and TSU Police Chief, Sylvia Russell (“Defendants”) to recover for discrimination on the basis of his sex, retaliation, a hostile work environment, and constructive discharge in violation of the Tennessee Whistle Blower Act, Tenn. Code Ann. § 50-1-304, the Tennessee Human Rights Act, Tenn. Code Ann. § 4-21-101, et seq., and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq.

In due course, Defendants filed a motion for summary judgment, supported by a statement of undisputed facts² and affidavits of Tony Blakey, a lieutenant with TSU’s police department; Linda Spears, Director of Human Resources at TSU; Chief Russell; Tonya Christensen, Tennessee Department of Children’s Services Team Coordinator³; and Mary Moody, General Counsel and Secretary to the Tennessee Board of Regents. In his response to the motion, Hardy filed his own affidavit, a response to the statement of undisputed facts⁴, a statement of additional material facts, excerpts from nine depositions⁵ and forty-one exhibits. Defendants replied to Hardy’s statement of material facts and moved to strike certain of the exhibits as inadmissible under Tenn. R. Evid. 802 and 901. Thereafter, Hardy filed a motion to allow an adverse inference as to certain questions asked and responses given in the deposition of Sgt. Leslie Jones, a supplemental statement of additional material facts and the deposition of Chief Russell. Defendants also filed a motion to strike Hardy’s supplemental statement of facts.

A hearing on the motions was held on July 26, and on August 12 the court entered an order granting Defendants’ motion for summary judgment. The order stated that the ruling rendered the other motions moot.

Hardy appeals, contending that the court erred in dismissing the action and in failing to state the grounds for the decision granting summary judgment. We have determined that

¹ The Tennessee Board of Regents is the governing board for state universities, community colleges, and vocational-technical schools.

² The statement of material facts consists of 110 statements.

³ On September 5, 2007 Hardy obtained a full-time job as a case manager with the Tennessee Department of Children’s Services; Ms. Christensen was Hardy’s supervisor’s supervisor.

⁴ Hardy’s response to Plaintiff’s statement of material facts is 73 pages.

⁵ Hardy filed excerpts from the depositions of Chief Russell; Asst. Police Chief Kizer; Linda Spears, TSU’s associate vice president and director of human resources; TSU Sergeant Frank White; TSU Sergeant Leslie Kevin Jones; TSU Lt. Phillip Beene; TSU Officer Walter Farmer; Ronald Morris, DCS Internal Affairs Regional Special Investigator; and May Sneed, an employee of the Department of Human Resources.

the court's failure to comply with Tenn. R. Civ. P. 56.04 requires that the judgment be vacated and the case remanded.

DISCUSSION

While this case was pending on appeal, our Supreme Court rendered its decision in *Smith v. UNS of Lakeside, Inc.*, 2014 WL 3429204 (Tenn. 2014), a healthcare liability case. The trial court in *Smith* had granted summary judgment to one of the medical providers but failed to explain the grounds for the decision; this court vacated the orders in question because the court failed to comply with Tenn. R. Civ. P. 56.04.⁶ On further appeal, the Supreme Court affirmed the Court of Appeals.

In so doing, the Supreme Court discussed the evolution of the requirement that the trial court state the legal grounds for granting or denying a motion for summary judgment.⁷ The Court acknowledged the difficulties posed in this court's review of trial court orders which have not complied with Rule 56.04, particularly those cases in which a review of the record does not provide a basis for this court to determine the rationale for the ruling. *Id.* at *10.

⁶ The portion of Tenn. R. Civ. P. 56.04 pertinent in *Smith* and to this case, provides that:

The trial court shall state the legal grounds upon which the court denies or grants the motion, which shall be included in the order reflecting the court's ruling.

⁷ The court noted that, prior to July 1, 2002, the rule did not require that the court explain its decision; on July 1, 2002 an amendment required courts, upon request of either of the parties, to provide an explanation for the decision. The rule was again amended effective July 1, 2007, to make the requirement that the court state its grounds mandatory. The Court stated that the changes to the rule were intended to address two concerns:

First, they reflect the growing awareness of both the Advisory Commission and this Court that explanations of the basis for judicial decisions promote respect for and acceptance of not only the particular decision but also for the legal system. Second, skeletal orders containing no explanation of the reasons for granting the summary judgment were complicating the ability of the appellate courts to review the trial court's decision.

Smith, 2014 WL 3429204 at *9.

The order granting summary judgment in the case at bar states:

This Court analyzed Defendants' Motion for Summary Judgment pursuant to the summary judgment standard enunciated by the Tennessee Supreme Court in *Hannan v. Alltel Publ'g Co.*, 270 S.W.3d 1 (Tenn. 2008).

After reviewing the pleadings on file, the motions, the responses to the motions, the replies, the sur-replies, the depositions, the affidavits, and the exhibits filed by the parties, the Court hereby finds that in regard to Defendants' Motion for Summary Judgment, that there are no genuine issues of material fact, the motion is supported by the record, and the Defendants are entitled to judgment on all of Plaintiff's claims as a matter of law.

Therefore, the Defendants' Motion for Summary Judgment is granted. Because this Court has granted Defendants' Motion for Summary Judgment, the other motions have been rendered moot. This Order is final, and the case is dismissed with prejudice.

The order does not state the legal grounds for the grant of summary judgment; neither does it provide any factual findings relative to the various causes of action asserted by Mr. Hardy and the defenses raised by Defendants.

We also reviewed the transcript from the hearing on the motion to discern the basis for the decision to grant Defendants' motion for summary judgment; the court made the following statements in that regard:

I'm going to grant the summary judgment on the sex discrimination, on whistleblower, and - - constructive discharge, and still thinking about retaliation.

I just - - let me go and review my notes. I just cannot see how retaliation can survive, but let me go back and check my notes.

So I've granted summary judgment on everything but retaliation, and I'm going to go back here and examine my notes.

[RECESS]

THE COURT: I'm going to grant summary judgment on all issues.

I cannot - - with all the inferences given to the Plaintiff, I can't find retaliation because he felt like he was being retaliated against, but there's no proof of anything. He made the same amount of money, he had the same hours, the evening hours. He had the same - - he could carry a gun. He had the same commission. He was a police officer. He had the same respect. I just can't - - I don't know where the retaliation is.

As I read this case, I was - - I was worried about the questions that would be on summary judgment, because I do not like summary judgments. But I felt I was bound, because we read everything. I read - - I stayed up for the last two nights reading and got up early this morning and started back in.

So I just - - I just couldn't find anything that had merit in this.

As with the written order, the oral ruling did not state the legal grounds for the grant of summary judgment; neither did the court state findings of fact.

The record in support of and in opposition to Defendants' motion is voluminous; the necessity of the trial court complying with Rule 56.04 cannot be gainsaid. Moreover, we do not agree that the court's ruling on the motion for summary judgment rendered the other motions which were pending moot.⁸

⁸ For instance, we cannot appropriately review the trial court's ruling on summary judgment without knowing if the court considered the matters contained in Mr. Hardy's supplemental statement of material facts, which Defendants had moved to strike, how the court treated questions and responses in the deposition of Sgt. Leslie Jones, as to which there was a pending motion for the court to make an adverse inference, or the manner in which the court considered the exhibits which were the subject of Defendants' motion to strike.

CONCLUSION

For the foregoing reasons, the judgment of the trial court granting summary judgment is vacated and the case is remanded. On remand, the court should address all motions pending at the time summary judgment was granted. Defendants are free to renew the summary judgment motion.

RICHARD H. DINKINS, JUDGE